

INFORMAL ADVISORY OPINION NO. 2002-1

A member of the public filed a Charge against an elected state official with the Hawaii State Ethics Commission. The Charge alleged that the state official deliberately omitted information required to be disclosed in the state official's initial financial interests disclosure statement in an attempt to deceive the public. The State Ethics Code, set forth in chapter 84 of the Hawaii Revised Statutes ("HRS"), contains provisions requiring certain state officials to disclose specific financial interests on a disclosure statement filed shortly after state service commences, and annually thereafter.

Pursuant to the Commission's procedures, a copy of the Charge was sent to the state official for the official's response. The official filed an Answer to the Charge with the Commission in a timely manner. The Commission reviewed this matter and voted to issue an Informal Advisory Opinion, pursuant to HRS section 84-31, in response to the Charge.

The Charge

The Charge pertained to the state official's initial financial interests disclosure statement. The state official was elected to a state position on November 7, 2000. Prior to being elected, the official filed with the Commission a "candidate's" financial interests disclosure statement, required of candidates for state elective office. Upon being elected, the state official filed an initial financial interests disclosure statement with the Commission. The Charge alleged that the state official violated HRS section 84-17, the State Ethics Code's financial interests disclosure law, by failing to disclose officership positions held by the state official in an organization, and by failing to disclose officership positions held by the state official's spouse in two organizations. The Charge also alleged that the state official failed to disclose information regarding the "nature of services rendered" by the state official and the state official's spouse for their private occupations.

The Charge alleged that the state official deliberately omitted this information from the state official's financial interests disclosure statement in an attempt to deceive the public. The Charge requested the Commission to formally investigate and take all action necessary to obtain a true, correct, and complete record as required by law.

After the filing of this Charge, the complainant further alleged to the Commission that a loan made to the official's campaign committee and reported by the state official to another state agency was not disclosed in the state official's financial interests disclosure statement. The complainant further alleged that the state official's private website included information about the state official's personal income, but this information was not included in the state official's financial interests disclosure statement. The Commission communicated these additional allegations to the state official.

Answer to the Charge

In accordance with HRS section 84-31(b) of the State Ethics Code, a copy of the Charge was sent to the state official for an answer. The state official filed an Answer to the Charge. The state official also promptly filed an amended financial interests disclosure statement with the Commission.

In the state official's Answer, the state official maintained that she completed the financial interests disclosure statement to the best of her ability. The state official asserted that she mistakenly believed that all entries on the statement concerned personal income or financial assets and liabilities, and thus she did not report non-paying officership positions held by herself and her spouse in private organizations. The state official also asserted that she did not realize that the State Ethics Code's definition of the term "business" was more inclusive than its ordinary meaning, since under the State Ethics Code, this term also includes not-for-profit organizations. The state official also asserted that she was confused about the relevant time period covered by the disclosure report. She stated that she believed that her candidate's financial interests disclosure statement, filed while a candidate for state elective office, was her "initial" statement, and that her financial interests disclosure statement, filed after being elected to state office, was her "annual" statement. As a result, the state official asserted that she believed that the relevant disclosure period was the time period between the two filings, and consequently, certain financial interests were not reported because of her mistaken belief that the financial interests held were outside the relevant disclosure period.

Along with her Answer to the Charge, the state official filed an amended financial interests disclosure statement. This was intended to amend the state official's initial financial interests disclosure statement, to cover the relevant disclosure period. The amended statement provided specific information about the state official's and spouse's private occupations, for which income was received. It also reported the various officership positions held by the state official and her spouse in private organizations during the relevant disclosure period, for which no compensation or income was received. The report also voluntarily reported the loan made to the state official's campaign committee, although it was unclear at the time as to whether disclosure was required by the financial interests disclosure law set forth in the State Ethics Code.

Further Developments in the Case

It appeared that the amended financial interests disclosure statement filed by the state official brought her into compliance with the financial interests disclosure law. However, the Commission thereafter received credible information suggesting that additional financial interests held by the state official and the state official's spouse during the relevant disclosure period had gone unreported.

In particular, the Commission received a copy of a form on file with a state agency that had been certified by the state official's spouse, showing that the state official served

as a director of and held two officership positions in an organization. The Commission also received information from the complainant indicating that the state official's spouse was operating a particular business, and thus might have had an ownership interest in the business. The Commission's staff compared these items with the state official's initial and amended financial interests disclosure statements and confirmed that these items had not been previously reported by the state official.

These matters were brought to the state official's attention. The state official was reminded that, because she was elected to a state office on November 7, 2000, the reporting period for her initial financial interests disclosure statement covered the period from January 1, 1999, to the date of the filing of her initial report. The state official was reminded that financial interests held by the state official and her spouse during that period needed to be reported to make her financial interests disclosure statements complete. The state official was also reminded that the term "financial interests," as defined in the State Ethics Code, included officerships and directorships in organizations, and ownership interests in businesses.

The state official disputed that she held a directorship and two officership positions in the subject organization during the disclosure period. She maintained that her spouse made a mistake on the form filed with the state agency, and this mistake was later corrected. In support of her position, the state official provided a copy of the form in which the mistake was made, and a copy of the form in which the mistake was corrected. Both forms had been certified by the state official's spouse, and had been filed with the state agency. The state official also maintained that her spouse was not operating the subject business, as had been alleged by the complainant. The state official contended that this particular business had ceased operating several years ago. The Commission independently confirmed that this particular business had in fact ceased operating several years prior, and therefore was not a financial interest that needed to be reported.

Around the time of these discussions, the Commission's staff reminded the state official that her annual financial interests disclosure statement was due shortly. The state official filed her annual statement with the Commission in a timely fashion. The annual statement reported a new ownership interest in a business held by the state official's spouse. The annual statement also disclosed new financial interests held by the state official and her spouse in two newly formed organizations. The state official reported that she and her spouse were serving as officers of these two organizations. Subsequently, the state official amended her annual financial interests disclosure statement to delete her officerships (which she resigned from) in the two organizations.

Analysis of the Charge

The Charge alleged that the state official's initial financial interests disclosure statement failed to disclose her officership positions in an organization, and her spouse's officerships in two organizations. The Charge further alleged that the state official did not disclose the required information regarding the "nature of services rendered" for their

private occupations. Subsequent to filing the Charge, the complainant also alleged that the state official failed to disclose a loan made to her campaign committee, and failed to disclose certain private income received by the state official.

The State Ethics Code requires the reporting of specific financial interests by certain state officials and employees. The financial interests disclosure requirements of the State Ethics Code are set forth in HRS section 84-17. This section requires certain state officials and employees to file a statement of their financial interests with the State Ethics Commission. HRS section 84-17(b) requires that annual disclosure of financial interests statements must be filed between January 1 and May 31 of each year. HRS section 84-17(b) also provides that initial statements must be filed within thirty days of one's election or appointment to a state position that requires a disclosure. Extensions for filing may be granted by the Commission. HRS section 84-17(a) provides that the disclosure period covers the period from January 1 of the preceding calendar year to the time of the filing of the state official's or employee's financial interests disclosure statement. The State Ethics Commission has maintained that, after the first filing, the disclosure period for subsequent filings runs from the date of the last filing to the time of the next filing.

It was clear that the state official was required to file financial interests disclosure statements with the Commission. Furthermore, pursuant to HRS section 84-17(f), the state official was required to include, on her disclosure of financial interests statements, any financial interests held by her spouse or any dependent children that were in the categories of financial interests that she herself was required to report. After being elected, the state official was notified in writing by the Commission that her financial interests disclosure statement was due by a certain date. The state official requested an extension to file her statement, and a fifteen-day extension was granted by the Commission. The state official's statement was received in due time by the extension date.

As state above, the State Ethics Code specifies the financial interests that must be included in a financial interests disclosure statement. HRS section 84-17(f)(3) provides that, among other financial interests, state officials and employees must disclose:

Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation.

The term "business" is defined in HRS section 84-3 to include:

[A] corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

The term "business" as used in the State Ethics Code encompasses a variety of entities, including not-for-profit organizations. HRS section 84-17, therefore, requires state

officials and state employees to report directorship and officership interests in non-profit organizations as well as such interests in for-profit businesses.

HRS section 84-17(f) also requires that state officials and state employees disclose “the source and amount of all income of \$1,000 or more received, for services rendered, by the person in the person’s own name or by any other person for the person’s use or benefit during the preceding calendar year and the nature of the services rendered” and “the name of every creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.”

As stated above, elected state officials are required to file an initial statement of their financial interests, and thereafter an annual statement of their financial interests, with the State Ethics Commission. In this case, the state official was elected on November 7, 2000. After being elected, the state official filed an “initial” disclosure report with the State Ethics Commission. This report was to cover the period from January 1, 1999, to the date of the initial filing. At the time of the initial filing, the state official apparently held three separate financial interests that went unreported. These interests were an employment interest held by the state official in an organization, and two officership positions held by the state official in an organization.

Also at the time of the initial filing, the state official’s spouse held three separate financial interests that went unreported. The interests were three officership positions held in three separate organizations.

Furthermore, although the state official’s initial financial interests disclosure statement reported the source and amount of income derived by the state official and her spouse as self-employed business people, the report did not fully describe the “nature of services rendered,” as is required by the financial interests disclosure law.

By failing to report her and her spouse’s interests in these organizations in her initial financial interests disclosure statement, it appeared that the state official had violated section 84-17 of the State Ethics Code. The Commission also noted that the state official neglected to describe the “nature of services rendered” for her and her spouse’s private occupations.

In reviewing this case, the State Ethics Commission carefully considered the Charge and related information. It appeared that, after the Charge was filed, the state official made the necessary disclosures as required by law. The Commission also considered the state official’s assertion that the omissions were due to a lack of understanding of the financial interests disclosure law.

The Commission has consistently regarded the financial interests disclosure law as one of the keystones of the State Ethics Code. The requirement of the disclosure of financial interests is rooted in the Hawaii State Constitution. Article XIV of the Hawaii State

Constitution requires that the State Ethics Code include provisions on financial disclosure. In relevant part, Article XIV states:

The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The financial interests disclosure law allows the public the opportunity to evaluate situations that might create conflicts of interests between state service and private financial interests. In the interests of privacy, not applicable to this case, certain state officials and employees with lesser powers file confidential financial interests disclosure statements that are reviewed only by the Commission.

The Commission believed that as an elected state official, the state official was required to file an accurate public financial interests disclosure statement with the State Ethics Commission. The Commission believed that full and complete disclosure enables the Commission and the public to assess the potential for conflicts of interests between the state official's state position and her private financial interests. The Commission believed that without complete disclosure, the Commission is hindered in its administration of the State Ethics Code.

In this case, the Commission considered the Charge's allegation that the state official deliberately omitted certain required information from her initial financial interests disclosure statement in an attempt to deceive the public. The Commission believed that the number of items omitted from the state official's initial statement could lead members of the public to believe that the omissions were intentional. The Commission also believed that the omissions could be attributed to carelessness or a lack of understanding about the State Ethics Code's financial interests disclosure law.

The Commission believed that although the state official's initial financial interests disclosure statement was deficient, her amendment to the initial report and subsequent annual filing appeared to be accurate and complete. Furthermore, the state official voluntarily reported a loan made to her campaign committee. The Commission thus believed that the state official made genuine attempts to comply with the financial interests disclosure law once questions were raised. The Commission concluded that the state official had brought herself into compliance with the financial interests disclosure law.

Because the state official made genuine efforts to comply with the disclosure law, the Commission decided to issue an Informal Advisory Opinion in lieu of continuing with

formal charge proceedings. The Commission issued an Informal Advisory Opinion to also clearly set forth the requirements of the disclosure law to ensure the state official's future compliance. The Commission noted that as an elected public official, the state official had a legal responsibility to ensure that her financial interests disclosure statements were accurate. Therefore, the Commission urged the state official to be more vigilant when completing her disclosure statements. The Commission noted that detailed directions accompany the Commission's disclosure forms, and the Commission's legal staff was always available to clarify questions the state official might have had. In short, the Commission felt that there was little legitimate excuse for an inaccurate statement.

The Commission believed that further proceedings were not warranted in this case, because the state official had been cooperative in promptly amending her disclosure forms, and appeared to bring herself into compliance with the law. Although the Commission believed that the state official should have exercised more care in preparing her initial financial interests disclosure report, the Commission believed that there was insufficient evidence of serious misconduct to justify a formal hearing in this matter.

Dated: Honolulu, Hawaii, January 23, 2002.

HAWAII STATE ETHICS COMMISSION

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